extent, if my second ground is correct, the first ground may not be correct; but they can stand together for the purpose of this judgment. On those two grounds then, I think, or at least on one of them, the applicant has disentitled himself to the relief he asks.

There is, however, another ground on which I think this application must fail. *Certiorari* will issue to quash an order which is voidable, but it will not ordinarily issue to quash an order which is wholly void. Now the question whether an order of a quasi-judicial body is voidable or wholly void is not always easy, but I think it must be approached from a practical point of view, and from that point of view validity seems to depend on enforceability. Supposing that in this case the applicant does not comply with the order of the Rent Board, but in fact chooses to disregard it and treat it as a nullity, could any proceedings be taken in law to enforce the order? I do not think that they could. The only orders which the Board could lawfully make in the circumstances were an order granting the then applicant leave to sue for possession or an order refusing him such permission. It is clear that for the exercise of those powers the Board does not require any system of execution or any officers charged with the duty of carrying out or enforcing its orders. In other words, the Rent Board itself has no means of enforcing an order of ejectment. It is, of course, possible that a person not complying with that order might be prosecuted under the Penal Code for "non-compliance with a lawful order". But if, as I have pointed out, the order is unlawful, that would be a sufficient defence to such proceedings. If therefore the present applicant chooses merely to disregard the Rent Board's order and treat it as a nullity, it is very difficult to see how anyone could attack him for such a line of conduct. This may be satisfactory for the applicant in one sense, but equally it defeats this application, because, if the order is wholly void, *certiorari* will not issue to quash it, for indeed there is then nothing to quash. On this third ground also I think that the present application fails, and that this motion must be dismissed with costs.

Motion dismissed.

In re SYED ABDULRAHMAN BIN SHAIKH BIN ABDULRAHMAN ALKAFF, DECD.

[O. C. J. (Brown, J.) January 23, 1953]

[Singapore — Originating Summons No. 125 of 1952]

Will — Trust — Whether trust for charitable purposes.

By clause 10(a) of his will the testator provided that the proceeds of the corpus of his property were ultimately to be paid "to such of the trustees of this my Will then resident in Arabia to be expended or laid out by them or him (if only one) in such charities or other public purposes in Arabia as they or he shall think proper."

Held: this trust in so far as they relate to the testator's immovable property is void for uncertainty.

By a disposition in his Arabic will the testator provided as follows: "Then the balance of the one third from the income to be spent by my trustees for schools in Tarim, Seiyun, and Doa wholly or partly, temporarily or permanently, whether religious or general knowledges, and every welfare according to their consideration."

Held: this disposition in so far as they relate to the testator's immovable property is also void for uncertainty.

Cases referred to :—

(1) *Vezey v. Jamson* 57 E.R. 27.
(2) *Blair v. Duncan* (1902) A.C. 37.
(3) *Houston v. Burns* (1918) A.C. 337.
(4) *Bence-Jones v. Attorney-General* 129 L.T. 247.
(5) *In re Best* (1904) 2 Ch. 354.
(6) *In re Eades* (1920) 2 Ch. 353.
(7) *Hunter v. Attorney-General* (1899) A.C. at p. 317.

ORIGINATING SUMMONS.

Dr. C. H. Withers-Payne for the applicants-trustees.

William Munro for the next of kin.

L. Rayner (Crown Counsel) for the Attorney-General.

Cur. Adv. Vult.

Brown, J. : — The testator, who was domiciled in Arabia, left immovable property in Singapore. His testamentary dispositions with regard to the immovable property are to be governed by the *'lex situs'*; and those with regard to the movable property by the *'lex domicilii'*. No satisfactory evidence is before me of the Sha'afi law, which must apply to the movable property, and in the absence of an affidavit containing a statement of the Sha'afi law as it affects these testamentary dispositions, I am in no position to determine the questions which are raised in this Originating Summons regarding the movable property. But in order to avoid further delay I have been asked to deal with the following two questions :—

(1) Are the trusts of the corpus valid in so far they relate to the immovable property?
(2) Are the trusts of the income issuing from the immovable property valid, except as regards the specific bequests set out on page 2 of the Arabic will made in Arabia on 20th December 1943?

The trusts of the corpus are contained in clause 10(a) of the Singapore will dated 8th September 1931. The trusts of the income from the corpus are contained

is clause 10(b) of that will. Mr. Rayner, on behalf of the Attorney-General, has argued that the Arabic will supersedes both clause 10(a) (in regard to the corpus) and clause 10(b) (in regard to the income). The material part of the Arabic will which is said to supersede these two clauses reads as follows :—

"I directed that one third of my property from the real estate in Singapore to be spent from the income and rent as follows:—"

I consider that I must attach to the terms "real estate" and "income and rents" the meaning which is legally their due. And I hold :—

(a) that the Arabic will does not affect the corpus;

(b) that it only affects the income which arise from the real estate.

Therefore upon the first of the two questions which I have to determine the material clause is clause 10(a) of the Singapore will; but upon the second question, which concerns the trusts of the income arising from the real estate, the material passage is the first paragraph at the top of page 3 of the Arabic will.

By clause 10(a) of the Singapore will the net proceeds of the corpus are ultimately to be paid "to such of the Trustees of this my Will then resident in Arabia to be expended or laid out by them or him (if only one) in such charities or other public purposes in Arabia as they or he shall think proper." I have to determine whether or not the words "such charities or other public purposes in Arabia" renders this trust void for uncertainty. In the case of *Vezey v. Jamson*[1] the trust was for the executors to dispose of at their pleasure "either for charitable or public purposes." In *Blair v. Duncan*[2] the words were "such charitable or public purposes as my trustee thinks proper." In *Houston v. Burns*[3] the trust was for "such public, benevolent or charitable purposes" as the trustees should think proper. In each of those cases it was held that the words describing the purposes must be read disjunctively and that the trust failed for uncertainty. Mr. Rayner has sought to distinguish this case upon the ground that the words "or other public purposes" require that the *ejusdem generis* rule should be applied, and that the public purposes are to be taken to mean "other charitable public purposes." In support of his argument he cited the case of *Bence-Jones v. Attorney-General*[4]. But in that case there were a number of charitable purposes mentioned following the first-mentioned purpose of endowing wards, beds, or cots in hospitals, and it was held that all the purposes subsequently mentioned must be construed as shewing an overriding charitable intent to benefit hospitals. But in the present case it seems to me to be impossible to attach to the term "public purposes" a charitable intention, merely from the use of the words "or other." The testator was requiring that the money should be expended on "charities" or on other public purposes which need not necessarily be charitable. It seems to me to fall clearly within the category of *Vezey v. Jamson*[1]. The words must be read disjunctively; and I hold that this trust fails.

The disposition in the Arabic will, which is involved in the second question, reads as follows :—

"Then the balance of the one third from the income to be spent by my trustees for schools in Tarim, Seiyun, and Doa wholly or partly, temporarily or permanently, religious or general knowledges, and every welfare according to their consideration."

I am asked by Mr. Rayner to construe the words "every welfare" as applying to the testator's bounty to the "schools." Every proper effort must be made to do so, because if this cannot be done the clearly-expressed intention of the testator to benefit the schools will fail. I have to determine whether these words can reasonably be brought within the scope of the decision in *In re Best*[5], where the words "such charitable and benevolent institutions" were held to mean that the institutions must be both charitable and benevolent, and the gift was therefore a good charitable gift; or whether this case is in the category of *In re Eades*[6] where the words "such religious, charitable and philanthropic objects" were held to create a gift which was not necessarily charitable and was therefore void for uncertainty. In other words, has the testator created this trust for the sole specific purpose of the welfare of the schools? Or has he, to adopt the expression of Sargant, J., in *In re Eades*[6], "enlarged the number of objects within the area of selection" by adding to the specific object of the schools the further indefinite object of "welfare," which need be in no way connected with the schools. Mr. Rayner relies upon the use of the conjunctive word "and." But that word does not join two adjectives which might both be said to qualify a noun, as in *In re Best*[5]. It adds a new noun without any qualifying adjective to link it up with what has gone before. It adds a new object; thus "enlarging the number of objects within the area of selection." If I could import into the word "welfare" some special connotation which would be applicable to schools, the position might be different. But "welfare" is a wide term denoting happiness and well-being and is equally applicable to a person, a community, or a thing. There is no meaning in that word which can relate it more to schools than to anything else. It is a word of general application, and as such it must be construed.

That being, in my view, the only possible construction to place upon this passage in the Arabic will, I think that authority is conclusive that the whole disposition is void. I refer to the following passage from the Lord Chancellor's Judgment in *Hunter v. Attorney-General*[7] :—

"It is undoubtedly the law that, where a bequest is made for charitable purposes and also for an indefinite purpose not charitable and no apportionment is made in the will, so that the whole might be applied for either purpose, the whole bequest is void, and I do not understand any of the judges of the Court of Appeal to question that doctrine."

It seems to me that that passage exactly fits the disposition which is under consideration. In my opinion this disposition is void.

In regard to prayer 3 of the Summons there will be an order in terms.

Prayer 4 is adjourned.

Order accordingly.

MUSA BIN YUSOF v. PUBLIC PROSECUTOR.

[C. A. (Mathew, C.J., Wilson and Briggs, JJ.) January 27, 1953]

[K.L. — F.M. Criminal Appeal No. 111 of 1952]

Penal Code — Right of self-defence — Limit of.

This appeal explains the proper limits of the right of self defence under the Penal Code which makes "the right of private defence in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defence."

The appellant in this case had been convicted of culpable homicide not amounting to murder. It was clear after the summing up by trial Judge that the assessors accepted the appellant's story that he was first attacked by the deceased with a piece of iron and that by the time he struck the fatal blow the same piece of iron has passed from the deceased's possession into his own possession.

The question was then at issue was whether after disarming the deceased of the piece of iron, the appellant was justified in going further than is necessary to defend himself.

Held: following **Alingan Kunhinayan & Anor. v. The Emperor**[1], the law in this country gives greater latitude to a person who is attacked than does the law in England. The question in such cases is not whether there was an actual continuing danger, but whether there was a reasonable apprehension of such danger. If such a condition exists, the person attacked is not obliged to retreat, but may pursue his adversary till he finds himself out of danger; and if in a conflict between them, he happens to kill, such killing is justifiable.

Case referred to :—

(1) *Alingan Kunhinayan & Anor. v. The Emperor,* I.L.R. 28 Mad. 454.

COURT OF APPEAL, CRIMINAL.

M. S. Mahendran for the appellant.

G. H. Summerfield (D.P.P.) for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by :—

Mathew, C.J. : — In this case the appellant was convicted of culpable homicide not amounting to murder, and was sentenced to three years rigorous imprisonment. There are two accounts of what happened on the evening when the deceased received the blow from which he subsequently died. The prosecution witnesses state that the appellant made an unprovoked attack on the deceased, while the appellant and his witnesses state that it was the deceased who attacked the appellant without warning.

It is significant, as the learned trial judge pointed out, that no evidence was given by the prosecution witnesses as to how the appellant came to receive the serious injuries that were in fact inflicted on him. What is quite clear is that certain of the injuries inflicted on the appellant and the fatal injury inflicted on the deceased were all caused by the same instrument, an iron trident, which could be used as an anchor for a small fishing boat. The appellant's defence was that he did no more than exercise his right of private defence, and that the blow he inflicted on the deceased was, in all the circumstances of the case, justified.

The learned trial judge in a full and careful summing-up set out the three conclusions to which the assessors might come. It is convenient to examine what the learned trial judge said :—

"If the blow is struck in self-defence, then, subject to what I am going to tell you in a minute or two, no offence is committed. Or again, if two people get into a fight and in the course of the fight which has been unpremeditated fatal blows were struck, then the killing is not murder. It is then not murder but culpable homicide not amounting to murder or what the law in England calls manslaughter.

Coming to the first question of self-defence, Counsel have told you that every man is entitled to defend himself. But that right is subject to very substantial limits. In particular in connection with this case I am going to read you something from the Penal Code:—

"The right of private defence in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defence."

Now, gentlemen, I am not taking the question from you, but you will remember that even on the prisoner's own story that he was attacked with the iron, by the time he struck the blows the iron had passed from the deceased's possession into his own possession, and I think it is very very difficult to say that once he had the iron and when he went on to strike blows with it he was acting in self-defence because, however the incident started, at that stage of the proceedings the Imam was unarmed and the prisoner was in possession of a very